

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in)	WT Docket No. 02-55
the 800 MHz Band)	
)	
Consolidating the 800 and 900 MHz)	
Industrial/Land Transportation and Business)	
Pool Channels)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for)	
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	
)	
Petition for Rule Making of the Wireless)	RM-9498
Information Networks Forum Concerning the)	
Unlicensed Personal Communications Service)	
)	
Petition for Rule Making of UT Starcom, Inc.,)	RM-10024
Concerning the Unlicensed Personal)	
Communications Service)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate Spectrum at)	
2 GHz for use by the Mobile Satellite Service)	

BAS RELOCATION STATUS REPORT

I. Introduction

Sprint Nextel Corporation ("Sprint Nextel") hereby submits its twelve-month progress report regarding the relocation of Broadcast Auxiliary Service ("BAS") licensees in the 2 GHz band. In the *Report and Order* ("800 MHz R&O") in the above-

captioned proceeding, the Federal Communications Commission (“Commission”) required Sprint Nextel to relocate all eligible BAS licensees in the 1990-2025 MHz band to the new BAS band plan at 2025-2110 MHz within 31.5 months after the effective date of the *800 MHz R&O*.¹ The Commission also required Sprint Nextel to “file progress reports within twelve months and twenty-four months after the effective date of the [800 MHz] *R&O* on the status of the [BAS] transition, including identifying the markets that will be relocated during stage one, and all remaining markets that will be relocated during stage two.”²

Sprint Nextel is carrying out its BAS relocation responsibilities in accordance with three Commission objectives: (1) relocating eligible BAS licensees within 31.5 months; (2) minimizing disruption to BAS operations;³ and (3) funding only appropriate BAS relocation costs consistent with the Commission’s comparable facilities policies and Sprint Nextel’s obligation to make a “true-up” payment to the U.S. Treasury at the end of

¹ See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶¶ 252, 352 (2004) (“*800 MHz R&O*”), as amended by Erratum, WT Docket No. 02-55 (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd 19651 (2004); Public Notice, “Commission Seeks Comment on *Ex Parte* Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding,” 19 FCC Rcd 21492 (2004) (extending BAS relocation deadlines by 45 days); Third Erratum, 19 FCC Rcd 21818 (2004); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004) (“*Supplemental Order*”); Erratum, WT Docket No. 02-55 (rel. Jan. 19, 2005); and Memorandum Opinion and Order, 20 FCC Rcd 16015 (2005) (“*800 MHz MO&O*”). BAS spectrum in the 2 GHz band is also authorized for use by the Cable Television Relay Service (“CARS”) and the Local Television Transmission Service (“LTTS”). This filing refers to BAS, CARS, and LTTS collectively as “BAS.”

² *800 MHz R&O* ¶ 352.

³ See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by Mobile-Satellite Service*, 15 FCC Rcd 12315, ¶ 42 (2000) (“*Second MSS R&O*”).

the 800 MHz reconfiguration process.⁴ Achieving these objectives requires good faith, diligent efforts, and careful coordination by all parties involved.

As discussed in detail herein, Sprint Nextel has dedicated extensive resources to promoting, facilitating and underwriting the cost of BAS relocation. Sprint Nextel has 33 full-time employees dedicated to BAS relocation, supplemented by substantial time contributions from employees in Finance, Supply Chain, Legal, Corporate Communications, and Government Affairs. It has created seven regional fully-staffed Sprint Nextel relocation teams,⁵ enabling it to conduct relocation activities in multiple markets and regions simultaneously. Sprint Nextel has also retained 11 outside vendors who have deployed over 70 employees to verify BAS licensee equipment inventories – one of the initial steps in developing a relocation plan for each station. In addition, Sprint Nextel is conducting an extensive outreach program to provide relocation education, support and guidance to BAS licensees.⁶

Sprint Nextel has to date already expended over \$72 million in pre-funding BAS replacement equipment to enable BAS manufacturers to accelerate and expand their operations to be able to provide replacement equipment for more than 1,000 stations within the Commission's 31.5 month relocation period.⁷ As a result, manufacturers have

⁴ 800 MHz R&O ¶¶ 252, 330.

⁵ Sprint Nextel's teams include project managers, spectrum resource managers and a team of broadcast engineers with extensive industry experience to provide technical expertise and support, and to assist the stations in determining what is necessary to provide incumbents with comparable facilities.

⁶ See, *infra*, Sections II.A and II.B.

⁷ BAS manufacturers have not for many years had to produce high volumes of BAS equipment and accordingly have scaled their operations to the much lower volumes needed to replace aging equipment in a stable and mature industry. The Commission's BAS relocation schedule has presented most of them with significant challenges to meet

equipment in their warehouses and ready for delivery once BAS licensees execute FRAs and begin relocation.

Accordingly, Sprint Nextel has and continues to comply fully with the obligations and responsibilities it accepted for implementing BAS relocation under the Commission's *800 MHz R&O*.

While Sprint Nextel has been diligently working to implement BAS relocation, only 17 of the more than 1,000 BAS licensees who must retune their operations have entered into Frequency Relocation Agreements ("FRAs") with Sprint Nextel.⁸ In sharp contrast, nearly 60 percent of the 800 MHz licensees that must be retuned in Phase I – including public safety operators, commercial systems and private licensees – have already entered into definitive FRAs with Sprint Nextel to retune their operations. More than 450 of the 500 licensees in Wave 1 of the first phase of 800 MHz reconfiguration have signed FRAs and approximately 150 of them are actively retuning user handsets and base station transmitters. Whereas 800 MHz reconfiguration is on schedule for completion within the Commission's 36 month deadline, not even one BAS station has completed its transition to the new band plan. Thus, the facts speak for themselves: BAS licensees are far behind schedule for completing relocation by the end of the Commission-mandated 31.5 month retuning period.⁹

anticipated demand. Sprint Nextel has made pre-funding commitments for replacement BAS equipment to assist the manufacturers in this effort.

⁸ An FRA is the basic agreement between Sprint Nextel and a BAS licensee as to the time period, equipment and labor required and cost of retuning a station in accordance with the Commission's requirements.

⁹ In eight markets there are no BAS licensees; accordingly, these markets are effectively retuned to the new 2 GHz band plan. In addition, some BAS licensees have chosen to surrender their licenses and not enter into FRAs.

This delay in access to the 1.9 GHz spectrum Sprint Nextel received as part of the Commission's *800 MHz R&O* has a direct impact on Sprint Nextel's ability to achieve 800 MHz band reconfiguration. As the Commission noted in the *800 MHz R&O*:

We recognize that Nextel may need to apply revenues derived from 1.9 GHz service to meet its obligation to timely complete 800 MHz band reconfiguration. It can do so only if it is afforded timely and certain access to 1.9 GHz spectrum rights in exchange for vacating certain 800 MHz spectrum and assuming the cost of 800 MHz band reconfiguration. Reconfiguration of the 800 MHz band is essential to our goal of timely abating unacceptable interference to public safety, CII and other 800 MHz systems. Given the unique facts of this case, there is an inextricable connection between quick abatement of unacceptable 800 MHz interference and Nextel's quick access to additional spectrum.¹⁰

Sprint Nextel respectfully submits that the lack of progress in BAS relocation results from two principal causes outside of its control: (1) the unsupportable demands of certain BAS industry representatives that Sprint Nextel indemnify BAS incumbents against any income or property tax liability the broadcasters may incur as a result of receiving new digital BAS equipment, a demand that is not supported by the *800 MHz R&O* or the FCC's rules, policies or precedent;¹¹ and (2) the inability of BAS licensees, station groups and Sprint Nextel to agree on terms of FRAs despite significant efforts

¹⁰ *800 MHz R&O* ¶ 222.

¹¹ Sprint Nextel has consistently maintained that it will reimburse BAS licensees for sales tax arising out of the purchase of replacement BAS equipment because it is a direct component of the price for this equipment. Sprint Nextel's approach is consistent with the 2003 broadcast industry estimate of total BAS relocation costs which did not suggest that Sprint Nextel would reimburse broadcasters for their own income or property tax liability. See Letter from Lawrence A. Walke, National Association of Broadcasters, to Marlene H. Dortch, FCC, IB Docket No. 01-185, ET Docket No. 95-18 (Oct. 16, 2003).

expended by Sprint Nextel, with the assistance of industry representatives, in developing model template agreements early in the relocation process.

Many BAS station groups have insisted that Sprint Nextel either pay their taxes or indemnify them for any tax liability they may incur as the result of receiving thousands of dollars of free new equipment paid for on their behalf by Sprint Nextel in accordance with the Commission's *800 MHz R&O*. Nothing in the Commission's orders in this proceeding or the Commission's rules, policies or precedents makes any party other than the BAS incumbents responsible for any federal, state or local taxes that may arise from their own individual business, accounting and economic profiles. Yet many BAS licensees continue to insist, despite not having any legal basis, that Sprint Nextel acquiesce to these demands.

Retuning progress has also been impeded by the difficulty Sprint Nextel has encountered in reaching agreement with BAS licensees and station groups on FRA terms despite the extensive work done by both Sprint Nextel and industry representatives to develop model template agreements early in the process. At the outset of the FRA negotiation process, Sprint Nextel had attempted to facilitate individual incumbent negotiations by working with broadcast industry trade associations over several months to develop "industry approved" template FRAs that could streamline the negotiations with individual BAS licensees. Although Sprint Nextel made a variety of substantive changes to its initial template FRA as a result of such discussions with the broadcast trade associations, individual BAS licensees and groups of individual licensees have subsequently raised numerous additional objections to the template documents.

In an effort to resolve this impasse, over the past month Sprint Nextel, broadcast industry associations and attorneys and other representatives representing a host of individual broadcasters have devoted significant time and effort to finalize an acceptable template FRA. Sprint Nextel is hopeful that this latest revised template will prove acceptable to the majority of BAS incumbents and that it will be finalized soon. Even if it is completed to the satisfaction of all negotiators, however, individual stations must still negotiate and agree upon the costs of their individual relocations before ordering replacement equipment and commencing relocation.¹² Moreover, some broadcast industry representatives appear to be taking the position that they will neither negotiate nor execute FRAs – even if the template is acceptable – pending confirmation from governmental authorities that the relocation will not trigger any relocation-related tax liability.

Accordingly, given all of the above, absent immediate Commission intervention, Sprint Nextel must report that it is improbable that the stage one relocation schedule submitted to the Commission on April 6, 2005 will be met. Sprint Nextel, however, will continue to work in good faith and take all the steps within its power to complete BAS relocation by the Commission's 31.5 month deadline.

¹² Despite the lengthy negotiation process encountered with the FRAs, there is much activity to report at the station level in anticipation of the FRAs eventually being executed. Many broadcast station and group employees have worked extensively with Sprint Nextel to complete inventories of their BAS equipment – much of it mobile – and to submit those inventories to Sprint Nextel so that they can be checked and verified. These individuals have contributed many hours to this effort in compliance with Sprint Nextel's requests and the spirit and intent of the Commission's *800 MHz R&O*. See Section IV for documentation of the extensive efforts by local broadcast engineers.

II. BAS Retuning Overview

A. Outreach Efforts to the Broadcast Industry

Relocation to the new BAS band plan will require significant changes to the facilities of many BAS licensees. In the new band plan, BAS licensees will be operating on 12 MHz channels as opposed to the 17 MHz channels used in today's BAS systems. Most licensees will need new equipment to operate on the narrower channels. In addition, BAS relocations must be carefully coordinated because of the integrated nature of BAS operations.

Sprint Nextel, in cooperation with broadcast industry representatives, has made substantial outreach efforts to educate BAS licensees about the relocation process and help them adjust to the changes associated with relocation to the new band plan. Sprint Nextel has established a web site – <http://www.2ghzrelocation.com> – that provides information and background about BAS relocation, answers to frequently asked questions, and key upcoming dates and events. The website is averaging 7,500 hits a month. In addition, early in the BAS relocation process Sprint Nextel teams met with groups of broadcasters in over 20 different television markets. During these meetings, Sprint Nextel made presentations that provide background and an overview of the BAS relocation process. Sprint Nextel has also made presentations to over ten local broadcast trade associations and groups, and attended the National Association of Broadcasters (“NAB”) convention in Las Vegas in April 2005. Sprint Nextel educated broadcasters on the BAS relocation process at the convention, answered questions from broadcasters, and made a presentation at the Broadcast Engineering Conference during the convention. Sprint Nextel personnel have also published and have been interviewed for articles about

the relocation process in broadcast industry trade magazines and will have an exhibit booth at NAB this April.

In addition to the “grass roots” efforts described above, Sprint Nextel has throughout the process consulted with the major broadcast trade associations: NAB, the Association of Maximum Service Television (“MSTV”), and the Society of Broadcast Engineers (“SBE”). Sprint Nextel, MSTV, NAB, and SBE began working together on the BAS relocation process even prior to the adoption of the *R&O*. These joint efforts led to the parties’ May 3, 2004 Joint Proposed BAS Relocation Plan, which the Commission adopted in the *800 MHz R&O*.¹³ Sprint Nextel also consulted with these groups in developing its BAS implementation plan, filed with the Commission on April 6, 2005.¹⁴ In addition, Sprint Nextel worked with MSTV and NAB in a joint filing seeking clarification of the Commission’s rules regarding eligibility to receive reimbursement for relocation costs.¹⁵

Sprint Nextel, in concert with the broadcast industry, has participated in efforts to assess the functionality and comparability of the new digital equipment. A number of broadcasters have conducted field tests using the new equipment, and these successful tests have, in part, provided reassurance of the comparability of this equipment. Sprint

¹³ See Joint Proposed BAS Relocation Plan filed by MSTV, NAB and Nextel, WT Docket No. 02-55 (May 3, 2004); see also Comments of SBE, WT Docket No. 02-55 (May 7, 2004) (expressing support for joint proposal).

¹⁴ BAS Relocation Schedule and Implementation Plan filed by Nextel, WT Docket No. 02-55 (Apr. 6, 2005).

¹⁵ Request for Declaratory Ruling filed by Nextel, MSTV and NAB, WT Docket No. 02-55 (June 20, 2005) (“Nextel/MSTV/NAB Request”). The Commission granted this request for clarification in the MO&O in this proceeding. *800 MHz MO&O* ¶¶ 105-108.

Nextel has posted the results of these tests on its BAS relocation website.¹⁶ It has also helped the broadcast industry arrange quarterly meetings with broadcast station chief engineers and BAS equipment manufacturers to discuss technical issues. These efforts promote a better understanding of how various BAS system components will need to be modified or replaced in the transition to the new band plan.

B. Role of Manufacturers and Service Providers

Manufacturers and service providers play a critical role in the BAS relocation process. There are fewer than ten primary manufacturers whose equipment will be used in implementing the relocation. These companies are providing a range of products necessary for BAS licensees to operate on the new band plan, including new radios where replacement equipment is necessary, upgrades to digital-ready radios, new and upgraded antennas, and remote control and other components. BAS relocation will require the services of tower and studio installation crews, ENG vehicle integrators, tower riggers, and other service providers that will be retained by BAS licensees to implement equipment and facility changes as part of the relocation.

Sprint Nextel has emphasized to manufacturers and service providers the importance of providing a sufficient supply of equipment and services to accommodate an expeditious, efficient BAS relocation process. Sprint Nextel has met with these parties to discuss all relevant aspects of the relocation process, including efforts to project the number of new or modified radios that will be required by relocation. As noted previously, Sprint Nextel has spent more than \$72 million in pre-stocking orders and continues to place orders and to commit additional funds to encourage the primary BAS

¹⁶ See <<http://www.2ghzrelocation.com/plugin/template/broadcast/technology%20updates>>.

manufacturers to ramp-up capacity and build an inventory to meet the upcoming demand, which far exceeds their normal yearly production levels.

In addition, Sprint Nextel has worked with manufacturers to develop new technology and features that will facilitate BAS relocation. Because of these efforts, new BAS equipment will have analog redundancy in digital radios so that the broadcast users have fallback technology built into the new radio should the digital portion of the radio fail. Sprint Nextel was instrumental in ensuring that manufacturers will provide replacement equipment capable of being remotely transitioned from “narrow-in-place” operation to operation on the new band plan; this will make a BAS market’s full transition to the new band plan more efficient and expeditious. Sprint Nextel also insisted that manufacturers provide broadcasters with at least a one-year warranty on all new equipment.

Sprint Nextel has been advised, however, that some manufacturers are becoming reluctant to continue to accelerate the pace of their production schedules and expand their existing inventories when so few BAS licensees are moving forward and signing FRAs. The low number of signed FRAs appears to be having the same impact on service vendors who will be installing BAS replacement equipment. Some vendors hired additional workers to meet the anticipated demand for these services, but recently have started to lay off these employees because of the delays in the BAS relocation process. This may cause installation delays later on, as service vendors will have to ramp up their hiring again once large numbers of FRAs are signed and relocation moves forward.

C. Audit and Cost Control Measures

Sprint Nextel will receive credit in the 800 MHz proceeding “true-up” process for the relocation costs it incurs in providing BAS licensees with “comparable facilities.”¹⁷ Because these credited costs will reduce Sprint Nextel’s potential anti-windfall payment, the Commission has effectively made Sprint Nextel a steward of public funds, subjecting it to auditing requirements and federal laws governing the use of federal funds. These federal laws apply equally to BAS licensees and equipment manufacturers. Sprint Nextel must consequently exercise good judgment in reimbursing BAS licensees for their relocation costs and must not knowingly participate in contracts that would likely be unjustifiable to outside auditors, the Commission, or any future federal investigative agency.

Sprint Nextel has accordingly established a robust audit trail in order to demonstrate the basis for reimbursed BAS relocation costs. These measures include, among other things, documenting and verifying the inventory of BAS equipment that will be replaced or upgraded, establishing a process for obtaining and reviewing quotes and purchase orders for equipment and services, and requiring BAS licensees to ship replaced equipment to Sprint Nextel for recycling. In addition, Sprint Nextel reimburses BAS licensees upon appropriate proof of expenditures. As required by the Commission, Sprint Nextel has also retained the national accounting and auditing firm KPMG to audit BAS relocation costs.¹⁸

¹⁷ 800 MHz R&O ¶ 330.

¹⁸ *Id.* ¶¶ 328, 350 (as renumbered by subsequent errata). A request for Commission concurrence on this selection by Sprint Nextel will be filed separately with the Commission.

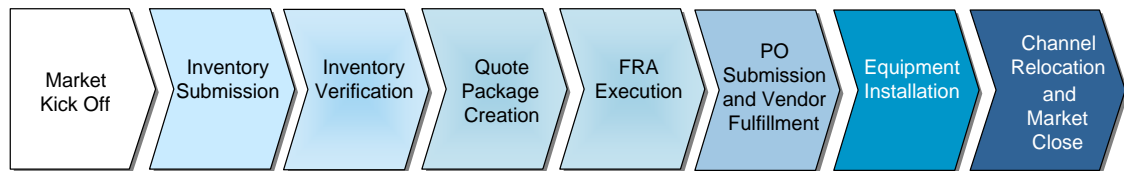
III. Overview of the Relocation Process

BAS licensees are scheduled to be relocated in two stages. In stage one, originally scheduled to be completed September 7, 2006, Sprint Nextel would relocate all BAS incumbents in the primary markets as well BAS incumbents in adjacent markets that raise inter-market coordination and interference problems. Once a market is cleared, Sprint Nextel would be permitted to initiate wireless operations in that market. During stage two, which is to be completed by September 7, 2007, Sprint Nextel would relocate BAS incumbents in all remaining markets.¹⁹ Relocating BAS will require careful coordination among all licensees within a market because “the integrated nature of BAS operations . . . makes isolated, link-by-link relocation infeasible.”²⁰ Coordination with adjacent markets will also be required in most cases because of inter-market sharing and interference issues. On April 6, 2005, Sprint Nextel filed its BAS Relocation Schedule and Implementation Plan listing the markets it expected to relocate in stage one and the markets to be relocated in stage two, and describing the steps it is taking to promote a smooth, efficient BAS relocation.

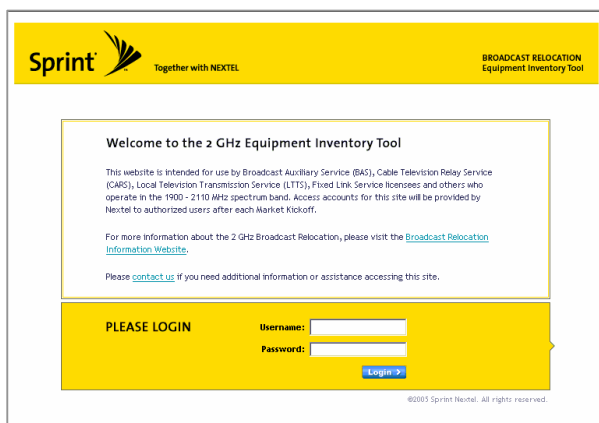
¹⁹ *Id.* ¶ 253.

²⁰ *Id.* ¶ 256.

The relocation process involves a number of steps to achieve the Commission’s goals of relocating BAS to the new band plan while minimizing disruption and costs:



Sprint Nextel initiates relocation in a market by conducting a “market kick-off” meeting with all BAS licensees in the market. During this meeting, BAS licensees in a market are provided an overview of the relocation process and the relocation schedule for the market is discussed. During the inventory stage, BAS licensees provide an inventory of the station equipment that is BAS-related. Sprint Nextel has developed a web-based



inventory tool to assist the BAS licensees in accurately compiling and submitting this inventory.

After the BAS licensee’s inventory has been submitted, vendors retained by Sprint Nextel visit each BAS

licensee to verify this inventory and provide a report that includes photographic documentation and initial existing system diagrams. Following submission of a licensee’s inventory, the licensee works with Sprint Nextel to establish the internal cost of its relocation using spreadsheets developed by Sprint Nextel to facilitate the process. In addition, Sprint Nextel has asked licensees to provide quotes from manufacturers and vendors for all equipment and external services needed for relocation. Sprint Nextel

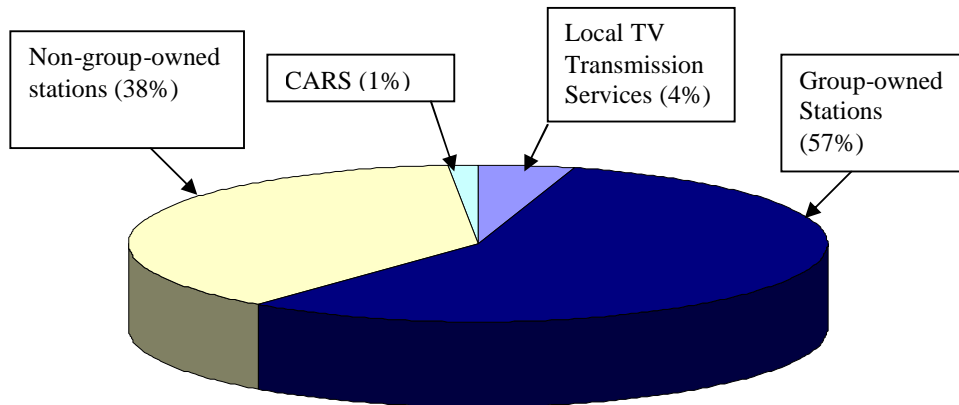
reviews these quotes and works with the licensee to help ensure that the reimbursed costs are appropriate.

During this process, Sprint Nextel's regional relocation team initiates FRA negotiations with each licensee. The FRA reflects the equipment inventory and quotes process that have been assembled, and spells out the cost reimbursement plan and the parties' mutual responsibilities in relocating the licensee to comparable facilities. Upon execution of the FRA, equipment will be ordered and installed by service providers selected by the licensee. BAS licensees will retain control over the installation process at all times. Sprint Nextel will compensate the licensee for its relocation costs each month based on receipts submitted by the licensee; licensees may also receive upfront payments to cover certain pre-FRA execution expenses. At the end of the process, all licensees in the market will switch to the new band plan according to an agreed-upon schedule, which will be designed to avoid undue disruption to BAS operations.²¹

²¹ Prior to this coordinated, market-wide switch to the new band plan, BAS licensees will follow a "narrow in place" protocol: each user on its own schedule will deploy new equipment that enables operation on 12 MHz channels, while continuing to operate on the existing channel center frequencies until all licensees in the market are ready to switch to the new band plan.

IV. Current Status of BAS Relocation

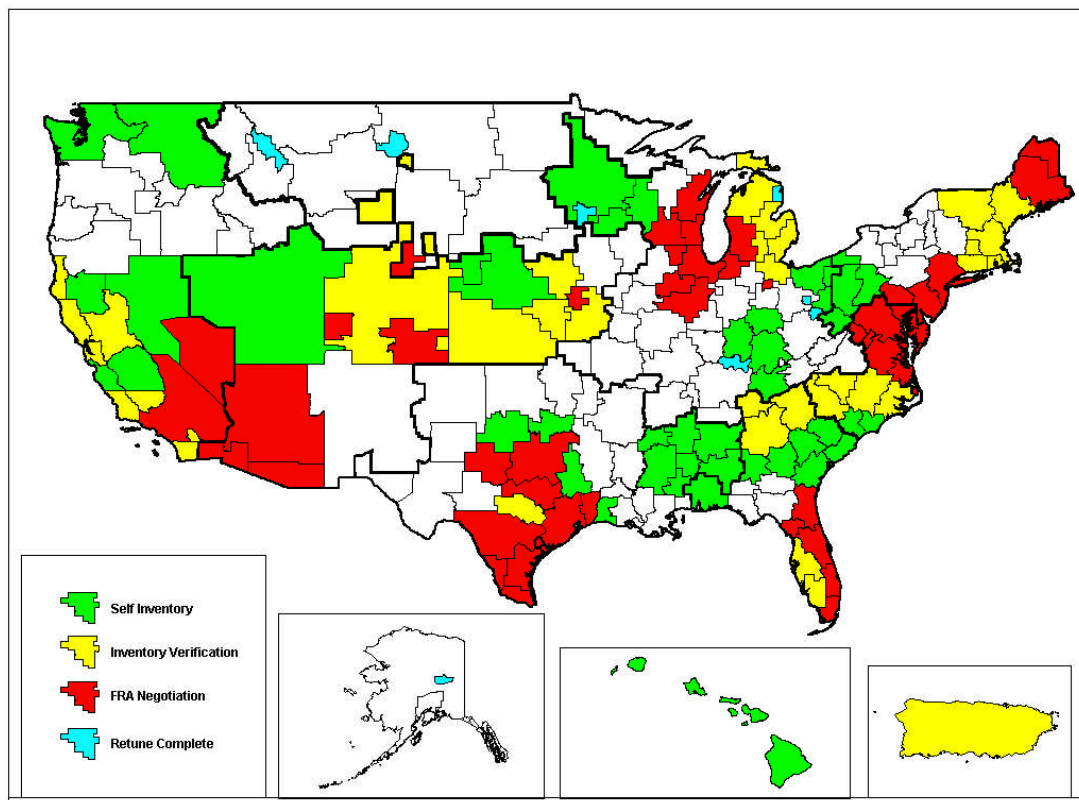
There are over 1000 eligible BAS licensees operating throughout the country that are required to be relocated under the new band plan. These licensees fall into the following categories:



As described above, very few BAS licensees have executed FRAs and no operating BAS licensees have completed the transition to the new band plan. Critical steps to performing 2 GHz relocation, however, have been taken by BAS licensees and Sprint Nextel. In 126 out of operational 205 markets with eligible 2 GHz licensees (Nielsen Designated Market Areas, or “DMAs”), including all 71 stage one markets, Sprint Nextel has met with all of the impacted broadcasters to “kick off” or formally begin the planning, inventory and negotiation process that will eventually lead to 2 GHz relocation. Those markets include 64% of all BAS licensees nationwide that are to be relocated. Of those licensees that have been engaged in this process, 90% have submitted their equipment inventory information to Sprint Nextel and most of those inventories have been verified by Sprint Nextel’s third party vendor. All of this up-front work is essential and will allow for the expeditious completion of FRAs once the obstacles

described above can be removed.

The following map shows the geographic scope of the project and the status of each market area as determined by the least advanced station.



The following chart describes the current status of BAS relocation:

	Number	Percentage (Nationwide)
DMA Markets “Kicked Off”	126 of 205	61%
Licensees Engaged in Process	676 of 1055	64%
Equipment Inventories Submitted to Sprint Nextel	611 of 1055	58%
Equipment Inventories Completed (submitted & verified)	352 of 1055	33%
Vendor Quote Packages, Cost Estimates, and Labor Rates Under Review	32 of 1055	3%
FRAs Signed	17 of 1055	2%

As discussed above, Sprint Nextel is doing everything within its control to complete the relocation of BAS licensees to the new band plan. There are, however, a number of factors outside of its control which hamstring Sprint Nextel’s ability to control BAS relocation and complete this substantial undertaking by the deadline established by the Commission. As described above, primary among these factors is the unsupportable demand from many BAS licensees that Sprint Nextel indemnify them against any income or property tax liability they may incur as a result of receiving new digital equipment.

As shown on the above table, Sprint Nextel and the broadcasters are progressing well through the verification phase of the relocation process, however, Sprint Nextel does not and cannot unilaterally control the negotiations process. A negotiation – whether mandatory or voluntary – is just that, and ultimately requires an agreement between two independent parties. Sprint Nextel has a strong incentive to enter into FRAs and relocate

BAS licensees as soon as possible given that, until this happens, it will not have access to the 1.9 GHz spectrum it needs to meet consumer demand for wireless services. In addition, Sprint Nextel is the only party subject to a specific deadline for completing BAS relocation under the *800 MHz R&O*. BAS licensees, in contrast, are not subject to any relocation deadline other than an ultimate “sunset” deadline in 2013 and as a result do not have the same incentives as Sprint Nextel. BAS incumbents do not feel the same pressure as Sprint Nextel to finalize negotiations and complete relocation on the aggressive schedule the Commission has established.

Regulatory uncertainty has also made BAS relocation more complex and caused delays in the negotiation of FRAs. There was uncertainty for a number of months regarding whether BAS operations licensed after June 27, 2000 (the reimbursement eligibility cut-off date established in one of the Commission’s earlier orders) but before November 22, 2004 (the Federal Register publication date of the *800 MHz R&O*) could be reimbursed for their relocation costs. The Commission did not resolve this issue until it adopted an order in October 2005 clarifying that such licensees could be reimbursed.²² While it clarified this issue, the Commission declined to issue a declaratory ruling regarding reimbursement rights for incremental equipment acquired after November 22, 2004;²³ this has prompted some BAS licensees to request funding for relocating this equipment even though they acquired the equipment after being provided notice of their relocation to the new BAS band plan.²⁴ More recently, a number of broadcast parties

²² *800 MHz MO&O* ¶ 107.

²³ *Id.* ¶ 108.

²⁴ MSTV and NAB joined Sprint Nextel in urging the Commission to clarify that licensees are not entitled to reimbursement for this equipment. *See* Nextel/MSTV/NAB Request.

have filed petitions for reconsideration regarding whether low power television stations and television translator stations are eligible for reimbursement.²⁵ The mere filing of these petitions has made some licensees reluctant to move forward in finalizing FRAs. This reluctance can affect the relocation of facilities not directly implicated by these issues, as some group owners may decline to reach any agreements until the regulatory issue affecting a small subset of their stations is resolved.

Sprint Nextel will continue to work aggressively and in good faith to take all steps within its control to expedite the BAS relocation process. It assures the Commission that it will continue to devote all necessary resources to achieving signed FRAs with all eligible BAS licensees. Sprint Nextel will maintain the personnel and supporting resources required to complete FRAs with any incumbent BAS licensee that desires in good faith to do so.

V. Stage One and Stage Two Relocation Schedules

Sprint Nextel is concerned that factors beyond its control will make it impractical to relocate many, if not any, markets currently included in stage one by September 7, 2006 unless substantial and immediate progress is made in overcoming the obstacles described above. These factors make it virtually impossible for Sprint Nextel to predict at this point which markets will be relocated by this date. Sprint Nextel will update its

²⁵ See, e.g., Mohave County Board of Supervisors, Petition for Clarification or Reconsideration (Jan. 27, 2006); Association for Maximum Service Television, Inc., Petition for Clarification (Jan. 27, 2006); Fox Television Stations, Inc., Petition for Clarification or Reconsideration (Jan. 27, 2006); KTVK, Inc., Petition for Clarification or Reconsideration (Jan. 27, 2006); Meredith Corporation, Petition for Clarification or Reconsideration (Jan. 27, 2006); Multimedia Holdings Corporation, Petition for Clarification or Reconsideration (Jan. 27, 2006); Scripps Howard Broadcasting Company, Petition for Clarification or Reconsideration (Jan. 27, 2006).

stage one/stage two schedules depending on progress in the coming months. The 800 MHz R&O gives Sprint Nextel the flexibility to make these adjustments, “allow[ing] [it] to determine its own schedule for relocating incumbent BAS facilities,” provided it relocates incumbent licensees before commencing operations in the market in question.²⁶ Moreover, in filing its BAS progress reports, Sprint Nextel must not only describe the status of the transition but must also “identif[y] the markets that will be relocated during stage one and all remaining markets that will be relocated during stage two.”²⁷ The Commission thus contemplated the possibility that Sprint Nextel would modify its stage one and stage two relocation schedules depending on the progress of BAS relocation. Although Sprint Nextel has no choice but to modify these schedules, and may further update them in the future, it remains unequivocally committed to doing everything within its control, consistent with the Commission’s rules, to complete the BAS relocation process in all markets by the 31.5-month deadline established by the Commission.

²⁶ 800 MHz R&O ¶ 255.

²⁷ *Id.* ¶¶ 254, 352.

VI. Conclusion

Sprint Nextel is dedicating substantial resources towards relocating BAS licensees as required by the *800 MHz Order*. It will continue to work in good faith with the broadcast industry, BAS manufacturers, and service providers to complete BAS relocation in a timely and efficient manner. This status report demonstrates, however, that there are significant issues impacting the progress of BAS relocation and, therefore, it is highly unlikely that the BAS relocation can be achieved within the timelines established by the Commission. Sprint Nextel remains somewhat optimistic, however, that through continued and diligent efforts between Sprint Nextel and broadcasters, and possibly Commission intervention, the 2 GHz relocation schedule can be met and public interest benefits can be realized.

Respectfully submitted,

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